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OBSERVATIONS

ON THE

State of Bankrupts,

UNDER THE

PRESENT LAWS.

[Price One Shilling.]

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OBSERVATIONS

ON THE

State of Bankruptcy

UNDER THE

PRESENT LAWS.

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In a LETTER to

A MEMBER of PARLIAMENT.

LONDON:
Printed for M. Cooper, at the Globe in Pater-noster-row.
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ON THE

PRESENT STATE of BANKRUPTS.

SIR,

I HAD the favour of your commands a few days ſince, wherein you deſire me to commit to paper, for your better recollection, the thoughts I lately gave you in a converſation relating to Bankrupts. You ſee I am very ready in my obedience; but, like moſt other ſervants, I cannot but have my complaints, that you allow me a very ſhort time for the performance.

In the firſt place, as one *Bankrupt* may be a worthy object of our regard and pity, whilſt another, as being a villain, may deſerve a gibbet, the ideas attendant on the word are very various, and conſequently the Bank-

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rupt ſtands in different lights to different people: It is therefore unlucky, that the community has not affixed diſtinct claſſicals, or ſpecific terms, for ſuch oppoſite natures as may meet under one head or genus; and it is more to be wondered at, as a real unhappineſs to it, that the law of treating them has not divided itſelf into two ſeveral courſes, according to that diſtinction. For from hence ariſes the controverſy on the name which has often happened in debate, even in the great council of the nation: The compaſſionate and ingenuous looking on the unhappy ſubjects as diſtreſſed brothers in the ſtate, who have a claim to the aid of the more fortunate and powerful, and the lawyers generally treating them as of the mob of delinquents, who demerit the puniſhment and ſufferings they undergo; under whoſe oratory the merits of their caſe has been oftentimes obſcured; it being a matter of law, and, though as plain as light, yet hid in the myſterious ſpeaking of thoſe gentlemen; whilſt ſuch worthies of the ſenate, who in general think it hard, often decline ſpeaking of what they fear they do not thoroughly underſtand. I ſhall for this reaſon venture at being more explicit.

It is true, the law certainly looks on the Bankrupt as a culprit under its chaſtiſement.

The

The preamble of the very firſt ſtatute made againſt them, of Henry the Eighth, ſuppoſes them to be perſons who have run away beyond ſeas, or elſewhere, from the payment of their juſt debts; therefore was a time limited for their ſurrender: but the neceſſity of the ſtatute was not at firſt thought applicable to a man, who ſtood in his counting-houſe at the head of his books; and, on any deficiency, was ready to ſhew his true eſtate to his creditors, to give up all to them, or compound for a reaſonable part.

The words of the ſtatute are theſe: "Whereas diverſe and ſundry perſons, craftily obtaining into their hands great ſubſtance of other men's goods, do ſuddenly flee to parts unknown, or keep their houſes, not minding to pay or reſtore to any of their creditors their debts and duties, but at their own will and pleaſure conſume the ſubſtance, obtained by credit, of other men for their own pleaſure and delicate living, againſt all reaſon, equity, and good conſcience."

And almoſt the laſt ſtatute of all, even ſo late as the fifth year of this preſent king, (which is the only one you need take the trouble of reading, as it for the moſt part comprehends all the reſt) has not altered its opinion of them for the better. Its words are, "Whereas many evil-minded perſons have bought, and taken upon truſt and cre-

dit, diverſe and great quantities of goods, wares, and merchandize; and have thereby, and by their extravagant manner of living, and otherways, contracted great debts, and having gotten ſuch goods and effects into their cuſtody, have ſold and pawned the ſame for leſs than the value thereof, and thereby raiſed ready money, and have withdrawn themſelves from their uſual places of abode, with their effects, into ſecret places, in order to oblige their creditors to accept of ſuch a compoſition for their reſpective debts, as ſuch evil-minded perſons ſhall think fit to offer; or have carried away their effects beyond ſeas, whereby their creditors have been totally deprived of their debts. And whereas, many people have, and do daily become Bankrupts, not ſo much by reaſon of loſſes and unavoidable misfortunes, as to the intent to oblige their creditors to accept ſuch their unjuſt proffers and compoſition, and to defraud and hinder their creditors of their juſt debts: Therefore, &c."

Now will any man advance that a perſon, who, on a failure of his affairs by accident, or a courſe of misfortunes, is willing to give all mankind a ſatisfaction, both as to his conduct and effects, is a perſon within the letter, or even meaning of theſe acts? or is the villain who, if guilty of the charge of the preamble, deſerves to be hanged at the firſt inſtance?

inſtance? *Why then*, you will ſay, *does he ſubmit to become a Bankrupt, as he may certainly avoid committing any act to make him ſo?* In anſwer to this, I ſay, that generally he is brought againſt his will within the letter of the law; for if he be ſent to priſon, and cannot procure bail within a certain time, a thing almoſt impoſſible for him to do where creditors bear hard:---or even if he hire bail, or if he but once deny himſelf, when at home, to avoid a payment, which he muſt do if he fears being arreſted; ---each of theſe is a ſufficient act. He has no time to offer or propoſe a compoſition: the commiſſion is already out; his creditors are haſty, and ruin is the word. Thus the gentle and honeſt man is ranked under the denomination, and forced into the claſs of villains, to give up himſelf and fortune, at the mercy of thoſe who are perhaps intereſted in his undoing, to be tortured on the racks erected for the ſuſpected knave and the flagitious. But what is ſtill a greater pain of mind, he muſt ſubmit his fame to be ſacrificed to common ignominy, lies, and ſcandal, as a pretence for what they do.

Is it not ſtill more ſtrange, that in this large circle of trade, where misfortunes muſt naturally ariſe, as all the events of trade are precarious, not an act has been

paſſed

paſſed in favour of ſuch a fair and unfortunate trader! The latter part, indeed, of the laſt preamble ſuppoſes ſuch a cataſtrophe, in the words *loſſes and unavoidable accidents.* Why then are there no laws peculiar to his caſe for him to fly to for relief? But why muſt he be tried under the ſeverity of thoſe planned out and deſigned for villains only?

We ſhould therefore make uſe of a more general term, without affixing ignominy, or inſinuating a requeſt of pity, and call all perſons indefinitely, who break bank, or ſtop payment, Inſolvents.

The two ſpecies of Inſolvents, the good and the bad, we may diſtinguiſh by the names; for the firſt ſort, of Compounder or Diſtributor: and as the word Bankrupt is odious to the law, and through its means has been ſtigmatiſed with infamy by general acceptation, we ſhould leave that, in its reputed ſenſe, for the ſecond.

This is a diſtinction I ſhall endeavour to obſerve, where I can, through the courſe of my letter, and is no new one of my own, but a juſt and wiſe ſeparation of cauſes and effects by every trading ſtate abroad, eſpecially Holland and France, where the very name of Bankrupt is poſted on their public buildings and pillars; whilſt the Compounder or Diſtributor are treated with temperance of juſtice, ſecrecy of their affairs, and

and a confident benevolence, that imitates friendſhip; which right uſe in them of the word, cauſes a reflection to be often, though miſtakenly, thrown on the character of Engliſh traders in general. For a proof of this aſſertion, we may ſuppoſe as many accidents in commercial tranſactions to happen among other trading nations, in proportion, as in England. If ſo, from the very few bankruptcies amongſt them, we may well conclude nine-tenths of their Inſolvencies rank under the ſpecies of Compoſition.

How much to be lamented, that in our home-circle of buſineſs, the largeſt private exchange of property in the world, the like diviſion of good and bad was not as equally made! I will venture at the cauſe. England, perhaps, of all countries of the world, murmurs moſt againſt its lawyers, and yet does nothing without them. Every occurrence between man and man muſt be embaſſied, on each ſide, with an attorney in form. When any trader ſtops payment, the firſt queſtion *of what is to be done*, which a diſappointed creditor aſks, is of his lawyer, who always adviſes a commiſſion to be taken out immediately, and his client to be the petitioning creditor: for if he can work himſelf in to be the clerk to the commiſſion, it is near one hundred pounds in his own pocket. Again, if the diſtreſſed

trader

trader calls in the aid of his lawyer, he gives the like advice, and for the ſame reaſon; but propoſes it to be taken out by ſome acquaintance, in a friendly way, promiſing a ſure amendment of his affairs; which more often, like a quack medicine, ruins the whole little conſtitution of himſelf and family.

For moſt people imagine, judging from the apparent reaſon of things, that when a man becomes a Bankrupt, and has delivered up his *all* to his creditors, his perſon is free. Alas! it may be otherways, his commiſſion is only an offer of his effects to them, which any man may make without one, and without its expence. It is no compulſion on his creditors: any one of whom who has him in priſon, and does not chuſe to prove his debt under the commiſſion, may keep him there, or may arreſt and ſend him to one, after the term of his ſurrender is expired, within which time even his bail may ſurrender him to priſon: nay, any one of his creditors, who have even proved under his commiſſion, may arreſt him, and hold him to bail; ſo he has not accepted any dividend. And what is more terrible, ſuch creditor ſhall have right to diſſent from his certificate: or any other creditor, who has not proved his debt, may have ſuch right granted to him, by petition, to the court; ſo he waves

waves his dividend, though, perhaps, he may, at the ſame time, hold him in priſon. Such creditor may lie in lurch with his debt, till almoſt the laſt moment his certificate is ready to be allowed, and ſo open the commiſſion for all to be done over again; nay, he may reſerve part of his demand for this cruel purpoſe.

Thus, in England, almoſt all inſolvents are hurried into this giddy vortex of the law, by which moſt are undone, except the cunning provident man, who takes care to turn a ſufficient part of his effects into ſome other channel, or to raiſe a new army of them, as to be ſure of overcoming all oppoſers by number and weight of metal; or who takes care, that there ſhall be ſufficient effects for his creditors, juſt to keep them in temper, and induce them to ſtick by the dividend rather than take his body. Theſe are your nice calculators; men, who, like Othello and as black, brag of their hair-breadth eſcapes. Such men appear again in the world like ſerpents who have caſt off their old ſkin, and come forth with new luſtre into the ſunſhine, carrying on, with an oſtentatious pride, their former trades, or ſome other new buſineſs, for which, perhaps, they made this artful change, in their own or other's names, at their uſual or better habi-

tations; and all this with credit and the general reſpect of mankind. Thus the real knave ſeldom becomes the object of pity, whilſt the undeſigning, truly unfortunate man, whoſe only fault is having too long ſtruggled with adverſity, and too much weakened himſelf in the conteſt, to which he was aſhamed to yield, is often left deſtitute of friends (for them perhaps he has already uſed) and of credit: for without friends to ſpeak for him, a man, perhaps, advanced in years, finds a ſelf-recommendation to the world very hard; not like youth, yet untainted with cenſure, whom hope encourages every introduced acquaintance to take by the hand. He, I ſay, is obliged to pine away in an obſcure corner, or rot out the remainder of his years in a priſon, and there, no doubt, repents of his honeſty for life after. Or what is worſe, and more terrible to the ſtate, if he be a man of activity and ſpirit, he leaves his native land with curſes againſt its laws, and finding himſelf unprotected by them, thinks himſelf looſed from his tie to her, regarding the firſt law of nature before the latter ſubſtitute of policy, carrying her arts and manufactures into other countries, even to our rivals and our enemies, who ſoon become friends to him; and, to ſay truth, if he is our neighbour

bour and brother, who does neighbourly and brotherly acts; which is our country but ſhe who protects and feeds us? Some, indeed, of uncommon perſeverance, ſtruggling with misfortune, want, cenſure, and contempt, in confidence of one day receiving juſtice from their country, remain now to ſue you and your brother members for judgment between the laws and them.

That theſe people are deſerving of relief, and that the parliament has expreſſed a feeling for their miſeries, are equal truths. We now come to ſay how they can be relieved.

The preſent laws concerning them are univerſally decried, as inſufficient of redreſs both for debtor and creditor, being only efficacious in puniſhing the unfortunate; for the provident Bankrupt, as we have ſaid, can before-hand evade them. They are in themſelves ſuch a motly heap or pile of half-law, half-equity conſtructure, and neither good, grown together by piece-meal additions and alterations, like an old irregular building, that any attempt of amendment would be dangerous; ſo that it would be wiſer to begin a new one than think of repairing the old, eſpecially as it is ſo deeply mortgaged for court-fees and other charges upon it. I ſhall, as you deſire it, hereafter examine ſome of the weak bearings and im-

proprieties of the old fabric, and give you my plan of the new; but the one that may anſwer the uſes of thoſe to come, may not ſuit, through length of time and change of circumſtances, the immediate neceſſities of the preſent objects: as, on the other hand, to endeavour at making the ſame ſcheme of relief for paſt Bankruptcies extend to or comprehend the purpoſes of all future ones, would be expoſing it to objections not properly belonging to it; or would be circumſcribing the better advantage which might be given to poſterity, to the narrow limits of the preſent caſe. We will therefore ſuppoſe, that the petitioners, who now, on their knees, take hold of the garment of their country, may firſt be made whole; which cannot be, but in ſimilitude of the alluded miracle, by moving up the ſudden virtue of their country; for the croud that throngs around her, to keep them off, is numerous and rude. And pray God, that the confidence put in the legiſlature at this time may inſpire that virtue, and be returned to them with the healing voice in the hearing of their oppoſers, "Thy faith, &c."

The common complaint of their ſuit is, "that the law has injudiciouſly put in the power of his creditors, who may be actuated by intereſt, prejudice, or malice; nay, frequently

quently of a ſingle one to deny them their certificates; through the want of which, they are hindered from every means of getting a maintenance for themſelves and families in theſe kingdoms; and after giving up their all to their creditors, are liable to be arreſted for their paſt debts, and for ever to lie in goal; (as numbers do) they being exempted the uſual benefits given to other debtors in acts of Inſolvency; as they are, erroneouſly, ſuppoſed to belong alone to equity, becauſe their creditors may, if they think fit, relieve them under the proceedings in that court."

We ſhall not here enter into a diſquiſition on the impropriety of putting ſuch power into their hands, who, being parties againſt the Bankrupt, are yet ſo far their own judges as to have life and death at their diſpoſal: we ſhall petition only to take him out of ſuch hands, who deal their blows without mercy. Nor ſhall we here cenſure the cruelty of the law in impriſoning a man for a debt, after it has diveſted him not only of every property, and every right of property, for the ſake of his creditors, but alſo of every means of earnings towards a payment of it. Nor ſhall we here controvert the weak argument of his belonging ſolely to equity, or diſpute any claim the officers of that

court

court may lay to him, although he be held a priſoner ſolely, by a common action of law, like any other debtor; nor take the pains to diſprove their only preſumption, poorly advanced,—" that if he were an honeſt man his creditors would have diſcharged him,' when the greateſt evidence in the world is living againſt it, namely, himſelf; for if he were otherways, their anger, prejudice, or intereſt, would have hanged him out of the way.

We ſhall therefore depend ſolely on the parliament's commiſeration of the preſent ſituation of paſt Bankrupts, and beſeech only a like relief for them, ſuch as other debtors have often received from it; to be ſo diſcharged from their debts, as to be reinſtated again uſeful members to themſelves and ſociety; which will be the firſt peculiar mark of favour they have ever taſted from its bounty.

This may be done by one very eaſy and effectual way, viz. by a ſhort act, declaring, " That all Bankrupts, who have juſtly conformed to their ſeveral ſtatutes, before the day of the making ſuch act be, within , months, intitled to their certificates; and that all perſons who have already proved their reſpective debts under the ſaid commiſſions, be intitled to a proportionable ſhare

of the ſeveral dividends to be thereafter made, notwithſtanding any former waving of the ſame by him or otherways."

This would ſatisfy all thoſe who have any demands or expectations *of fees* on them for their certificates; and would even be very acceptable to many former hard-hearted creditors, who, not being able to recover any thing againſt the Bankrupt at law, and having been excluded by their own act the benefit of the dividends, now repent of their auſterity, and would be glad to be brought into a ſhare of the eſtate under the equity they before perverſely neglected.

Other creditors, who wiſh ſtill to keep the Bankrupt in a gaol, take me up in dialogue, and ſay, *What will the parliament take away my debt?* No; it has no right to do that. If any effects remain to pay you, prove it; and then the Bankrupt has not conformed to the ſtatute, and inſtead of getting his certificate ſhall be hanged. *But,* ſays he, *ſhall I loſe my revenge?* Yes, Chriſtian, you ought: and may heaven, laying aſide its general contract with man, as to your part, forgive you.——*But,* ſtill ſays he, *I may not be a Chriſtian; I am a Jew. Nay, I have a right to be an infidel or unbeliever: and where then is liberty for me in this country, as one man againſt another?* Where is the liberty of the

poor

poor debtor, as a man againſt a man, if, when he has given up his all, you be allowed ſtill to hold him through meer revenge? Do you call a power of doing ill liberty? That country has moſt, where its ſubjects are moſt hindered from doing the leaſt injury, the one to the other. If he hath cheated thee, there is another law and other puniſhment for that; purſue them. If he hath ſtruck thee, or even by word injured thy good name, you may have reparation or revenge: but if he be only thy debtor for property, and have no property wherewith to pay thee, wouldſt thou ſell his body in this land of liberty, in payment of thy debt? Yet better thou didſt. Better for him and the community, to work in health a ſlave for a ſubſiſtence, than loſt to the ſtate and himſelf, to ſtarve in conſtrained idleneſs, or pine in ſickneſs through confinement. But was that your contract? Did you truſt his body? *No*, you will ſay, you *truſted to his property, to pay you back your own.* Take it if he has any. *He has none.* Then is he a total loſer, and none you can have. But you urge, *That people, by extravagance, beget their own misfortunes; and unleſs ſome were made examples to the reſt, many would fall into the pit, for want of its being thus marked out to others.* Though criminals, for that reaſon,

ſon, generally ſuffer puniſhments larger than their crimes, the debtor's caſe is not a parallel with theirs. He may come under the law through unforeſeen, unpreventable misfortunes. His very virtues and good qualities may have been the cauſe of his undoing; and better ten defaulters ſhould be treated with lenity, than one virtuous man ſhould ſuffer in the croud. But here his very crime to you is his puniſhment; *his being Inſolvent.* If he was vain and giddy, it is a ſufficient damp to his pride, and leſſon to his underſtanding. If he was crafty and deſigning, it is a reproof to his cunning, and a future memento to honeſty. If he was induſtrious and unfortunate, it is a leſſon that we, who have not deſerved better, have more viſible favours for which to thank heaven, than he has. But you avow, That *your priſoner is a bad man; that if he had his liberty or power of impoſing again upon mankind, he will even do miſchief to ſociety.* If ſo, I mean not to take the part of the bad; but who ſays ſo beſides yourſelf? Or if they do, how do they prove it? You ſay ſo, and another ſays ſo; that is no proof. But here is another man gives him a fair and honeſt character. Here is another extols him for his many good qualities. *That is no proof again,* ſay you.—No;—but is a contradic-

tion to you, and to what the other man ſays againſt him. In ſhort, *you believe him a bad man*; but you ſhall be no judge in your own cauſe: that is not liberty.—Priſoner, go free.

Here, you cry out, *Let him make me ſome propoſal to pay me when he is able, and I'll conſent to his diſcharge, or any thing, whereby he may obtain his certificate.* Alas! he cannot. The common debtor has many inducements to propoſe to his creditors to grant him his liberty: the hopes of the future aſſiſtance of his friends, and, conſequently, of his paying them from his future effects: which promiſe the Bankrupt cannot make, as he firſt wants the hopes; and until he obtains his certificate, even the common earnings of his labour belong, in equal diſtribution, to all thoſe who have proved debts under his commiſſion. And a promiſe, a note, or obligation, to pay you, whenſoever he gets his certificate, is made void by the ſtatute, and would be, as the obtaining it was thro' theſe means, a foreſwearing himſelf, who is to do nothing by way of bribe, or purchaſe to obtain it.—This, I hope, ſatisfies thee: for I know thou hateſt perjury.

What do you wait for? you cruel creditor! Thou canſt get nothing here; and yet, I think, I know what it is which you have

have ſtill to aſk. *You would have a reſervation left you*, in the mercy of the parliament, *to his future effects*. You own it. Then you, for that uncertainty, that diſtant chance to what hereafter he may have, would create a certainty, that he never ſhould have any effects at all: for if he, having nothing of his own, muſt begin the world on credit, how or from whom muſt he procure that credit wherewith to begin it, when the effects lent him by others are liable to you? You would not ſo much as wait for a gain to be made on them, and ſo take the profits meant for his own and family's ſupport. No, you would not riſque that, but would immediately ſeize the property of others in his hands, which has too frequently happened. Then who would truſt their goods in your debtor's hands, for you to pay yourſelf with them? Your requeſt is vain in itſelf; for if it was granted, you would, beſides the debt, loſe the debtor. He will not ſtay in the kingdom. He is maſter of an art, or has knowledge. Either of theſe recommend him to eſteem and affluence amongſt various polite nations. Look at the great navy of Spain, above fifty ſhips of the line and twenty-three frigates, built within the laſt ſeven years by four of our countrymen, Mr. Richard Rooth at Ferrol; Mr.

Edward Bryan of Cartegena; Mr. Mathew Mullan at Cadiz; and Mr. David Howel at St. Andrea, who were oppreſſed Bankrupts and inſolvent fugitives! How many of the kind are in the nearer kingdom of France? Look at the woollen manufactory at Madrid, the manufactory of Mancheſter goods at Roan, and that of paper hangings at Peterſburgh, all ſet up by Britons.

See the injured Mr. Crammond, now in the councils of Verſailles, opening his whole treaſure of knowledge, as no man had more, of our commercial conſtitution to that envious and enterprifing nation! And ſee even the injurious Mr. Bellamy, who never even appeared to his commiſſion, ſettled at Leghorn, and thence exporting the woollen manufactures of France, as Britiſh produce, into Turkey, where he was uſed to trade. Theſe are remarkable inſtances in the higher claſs. How many muſt the number of the inferior be, whoſe power of inſtruction only, has recommended them to an happy livelihood? But the fame of whoſe works is ſet abroad in the foreign encourager's or undertaker's names!—Then for this ſhadow in your expectations, which you yourſelf deſtroy, by taking away the ſubſtance, this particularity of ſelf-ſatisfaction or enjoyment of ill-humour, do you aſk the

parliament

parliament to riſque the nation's ruin? Muſt ſhe loſe ſo many ſubjects for your caprice, and let our enemies, and other countries, profit by their ingenuity? What weight do you put into the oppoſite ſcale? A meer ſcruple! But you are light in the balance of reaſon.—Farewel.

What have you not done? *A ſingle queſtion to aſk. Why ſhould the Bankrupt eſcape freer from me than any other debtor, freed by an act of Inſolvency? In which acts the legiſlature has thought proper to ſubject the future effects of the debtor to his then preſent creditors?* You muſt have an anſwer.

Acts of Inſolvency extend to all denominations of people, but for a ſum no farther than five hundred pounds to any one creditor, which circle collects moſtly handicrafts, or people inferior to large dealings; therefore have Bankrupts, whoſe dealings are ſuppoſed too extenſive to be conſidered within thoſe acts, been always unhappily precluded their benefit. For debts within ſuch limitation are thought to be ſums, which many of thoſe, who take advantage of the act, and cannot be ſingled out in the general law, may be ſuppoſed to be hereafter capable of paying. The weekly-paid handicraft cannot be thought to be thereby affected, as he is not ſuppoſed to amaſs any great ſavings.

Acts

Acts of Bankruptcy extend to traders only, and for an unlimited ſum: for trade may have led a man, by connected occurrences and unavoidable accidents, into greater debts, and larger engagements than his partly-retrieved circumſtances could be apprehended ever able of anſwering. The firſt are conſidered as relieved againſt the ſeverity of their creditors, by favour of the ſtate, and muſt take the favour as it is given: the laſt as delivering their all to their creditors, and who as traders, and brought up with ſtudy thereto, are ſuppoſed not to be able to get their bread, without entering into trade or commerce again, any more than the freed handicraft is ſuppoſed to live, but by the exerciſe again of his manual trade or art. For the claſs of people who become Bankrupts, are ſeldom of the low or inferior degrees of traffickers or artiſts; and therefore, for the encouragement of trade in general, out of neceſſity, they are ſet intirely free from all future demands for paſt occurrences, becauſe, though we repeat what we have ſaid, as they have nothing of their own, and muſt ſet out again on credit only, what relation or friend, or other man whatever, would truſt them with money or effects, if ſuch given or lent property was liable to be ſeized for former debts?

Trade

Trade is ſo reciprocal and connected an intercourſe amongſt all its followers, that it is like a general partnerſhip of the whole, and each man is a partner to the other, and trades on others property as well as his own. This uſed property of others is credit, and is the general ſtock or capital of the partnerſhip; and each man's private principle or property is his part or ſtake, put by him into the general bank or ſtock, for his uſe of the ſame, or credit: and thus each man is ſuppoſed to take and get credit, according to the rate or greatneſs of his own particular principle or property in the ſtock.—A deficiency in his private principle, in proportion to his credit uſed, runs him in debt or behind-hand to the general ſtock; and he can no longer be a fair trader in this ſyſtem of partnerſhip. This is called Bankruptcy, or rather Inſolvency: and the law which one trader gives to the ſufferer, the ſame he may receive back.

If ſuch perſon be reinſtated by general conſent, and ſets out anew in buſineſs, he is a new actor and adventurer: and why ſhould his ſucceeding creditors be anſwerable to the former? Or, if the ſame perſons, why the preſent contract be chargeable with the paſt? eſpecially as he has now no property of his own to ſtake for that new credit: ſo that it is,

is, in fact, others who trade at their ſole riſques, through his hands. And any ſucceeding property he may gain, by a ſucceſsful induſtry and attention to buſineſs, on which he was truſted, grows and becomes but a ſtake or ſecurity to that new credit lent him, or to what he may take hereafter.

The revival of the Bankrupt is agreeable to his political death. He, from the time of his firſt committed act of Bankruptcy, being conſidered dead in law, until, through his certificate alone, he riſes into life. How cruel then ever to keep a living man in his grave! for he has ſo intirely yielded up himſelf and affairs into the hands of his creditors, that he cannot interfere in any particular, regarding his paſt eſtate. As, therefore, he is diveſted of all ſuch power relating to his paſt circumſtances and affairs, he cannot properly be anſwerable for any after-diſpoſition of them. His creditors have choſen his aſſignees to do that office for him and them: and it would be hard, that their miſtakes or neglect ſhould, like a peſtilence, light on his future induſtry and care; eſpecially if we reflect how groſsly neglected are the Bankrupt's affairs, and the ſad accounts given of them in general.

Though in this difference between the Bankrupt, and the priſoner diſcharged by the

the acts of Inſolvency, I have ſhewn that the latter's neceſſities, or caſe, do not in general need that more extenſive diſcharge from all paſt obligations which the Bankrupt's ſituation and nature of his buſineſs require; yet I can ſee no manner of account to be given, why, when the impriſoned Bankrupt comes within the other's caſe, viz. of being confined for debts, each under five hundred pounds, he is not admitted an object of equal mercy. He is certainly more intitled than the other, as he delivers up his effects with the greater riſque of his life, which the other does not; and his creditor, though diſappointed of his body, can eaſily at any time be let in, to prove his debt under that diviſion of his eſtate.

Law ought always to be uniform to reaſon: where the ſame reaſon applies, the like redreſs ought ever to be given to her ſuits. But in paſſing through the different courts of law and equity, ſhe has different fees to pay the attendants, who are to admit her to the ear of the great perſonage; or who, like the ſaucineſs of other Engliſh ſervants, keep her back till they are firſt ſatisfied their demands. But we have yet a ſtronger argument.

In the lords acts, where debtors have been allowed to demand of each creditor

two ſhillings and four-pence a week, for every ſum not exceeding one hundred pounds, for which they ſtand charged in execution, or be ſet at liberty; the poor confined Bankrupt is judged to have equal merits in his caſe, and is admitted to the general relief intended. Why is he then excluded the like power of compelling that charity as other debtors have in the higher degree allowed by the acts of Inſolvency? Why ſhould equity permit him to come within the influence of ſuch law-mercy, beaming, as it were, from ſuch a center or fixed point of reaſon, and yet, at another time, drive him out of the ſyſtem, as not at all belonging to it? Does ſhe admit a man may be an object of compaſſion for one hundred pounds, and not for five? Is the ſum of one hundred pounds the boundary of honeſty, which he who exceeds muſt be a knave? or, rather, are the ſort of men, who come within ſuch a narrow compaſs, apprehended not worth her trouble of interfering about them, or keeping to herſelf?

But why does equity claim ſuch right over him at all? It is true, he has always been ſaid to be her creature; but he is, in fact, a ſon of the law's. She is no more than his guardian. The laws concerning him were made, nay created by parliament; and every

rule

rule for his conduct preſcribed by them. They are, indeed, put into the adminiſtration of the court of equity: but the law yet conſiders him her ſon, to direct for him as ſhe pleaſes, and holds him in regard. And, indeed, no order which ſhe has given concerning him, but ſhe might as well have ſeen more regularly executed under her own eye, and intruſted to a court of common-law in a ſummary way, as the acts of Inſolvency are. But this ſhall come under another head of our promiſed plan of amendment.

The ſubjecting his future effects to paſt obligations is the very ſame ſtate of things to him as denying him his certificate; which, ſo long as refuſed, makes liable his preſent and future eſtate to former incumbrances, and would, in like manner, be equally productive of the evils we have before-mentioned, of lingering death, poverty, and obſcurity to thoſe, who are patient in their ſufferings, or tranſportation of our arts and trades into foreign kingdoms, by ſuch of them who are more reſentful: ſo that I may go farther, and aſſert, that it is a very impolitic tenderneſs of government, to allow ſuch people the liberty of breathing the free air of mankind, though cruel the reverſe would be in its nature, unleſs, at the ſame time, it

totally ſet them clear, by the uſual certificates, from future incumbrances for paſt debts. And therefore, paying reſpect to a parity of reaſon, I have conſidered the clauſe in all acts of Inſolvency, which ſubjects the debtor's future eſtate to the payment of his creditors, to do more harm to the ſtate in that very particular of ſending ſuch of them abroad, who, by the nature of their ſeveral buſineſſes may, like the Bankrupt, want a credit to ſet themſelves up again, than the good done in the exerciſe of ſuch public humanity can out-balance. For though, as we have ſaid, ſuch people are not in the ſtate of leading-ſtring infancy, as the uncertified Bankrupt is; yet, where they are again to ſet out on credit, that very clauſe checks every expected act of friendſhip, which they ſollicit to their aſſiſtance; and ſuch of them who have no merit, muſt alſo even go ſeek for friends to it, in other places: upon the whole, thoſe acts, as to that point which runs parallel to the caſe with Bankrupts, are very alarming to a ſerious conſideration of them, as being productive of great national evil.

And now, creditor, I have anſwered your queſtion, I am to thank you for your ſilence; yet one thing I have forgot, as regarding their ſufferings, and as a trial of your humanity.

The

The common debtor, though in priſon, may have a buſineſs carried on for him by his family, or may have various means of maintenance. The Bankrupt muſt come into a priſon without a farthing, and without means or opportunity of getting one. Allow him then a maintenance. Though humanity may not prompt you to it, yet it may keep him alive as a daily feaſt for your revenge. *Let their aſſignees*, you ſay, *allow them a proper maintenance out of their eſtates in their hands, to be deducted from all their creditors.* You have, I ſee, no diſlike to charity, ſo it coſts you nothing. They may not have effects in their hands, or may not chuſe to advance them: but why ſhould all pay for the caprice or perverſeneſs of but one or two? No. The perſon who confines muſt maintain. I aſk you, will you allow him any thing? You will not. Then by your inhumanity he muſt ſtarve.

So far my dialogue; the length of which bids me ask your pardon: but creditors are troubleſome people, and cannot eaſily be got rid of.

I could here alſo bring the creditors, who hold not his body, but keep back his certificate, into queſtion and anſwer with me; and perhaps make them, and even his aſſignees own an intereſt in his ruin, and confeſs very ill treatment of him and of his affairs.

The firſt, whom we have argued with, are open enemies, and take advantage of the war in keeping him a priſoner: theſe are equally his foes, but have treacherouſly entered into the treaty offered, and afterwards perform nothing which was depended upon from their part: but a diſcovery of all theſe affairs will come out, more properly, at the examination of the frauds, and over-reachings of the creditors, by the deficiency of the preſent laws regarding Bankrupts; which, like an ill ſet of acquaintance, will turn evidence againſt each other. And as I am now upon the general prayer only, or argument of the humane neceſſity there is of granting them their certificates, without repeating other grievances, I ſhall juſt beg you to conſider

What the conſequences muſt be, if the number of perſons in this kingdom, who unhappily are under the denomination of Bankrupts, as not having obtained their certificates, be diſappointed in the preſent hopes and expectations they have ſo long placed in the goodneſs of parliament! What can their portion be but utter deſpair? The long-debated queſtion will then be determined againſt them; and they will never have any further favours to aſk or expect from their country. They muſt flee into foreign kingdoms, to our rivals and our enemies, and many

many of them with hearts, no doubt, well-wiſhing her intereſt, turn traitors of neceſſity. The number which now waits this reſolve of the houſe are very many: ſome hundreds. The number already gone is great. All future ones will hence learn more wordly cunning, and, *like the artful Bellamy*, not wait till a commiſſion be paſſed againſt them; which will be hereafter held, like a death-warrant to trade, but will get abroad by eaſy contrivances, conveying thither their effects. What a loſs may this be to the kingdom? the number of Inſolvents in each year, who now become Bankrupts, are about three hundred. Suppoſing a quarter of theſe to leave the kingdom, ſhall we have one branch of trade to ourſelves, but what, in a ſhort time, will be carried over into other countries? Beſides, it ſhould be conſidered, that they, who go abroad, are generally the moſt ſkilful in arts or buſineſs, who can truſt moſt to their own merits. I ſhould rather think, that the well-wiſhers to this country would ſet about contriving how to bring back thoſe who are already gone.

A grant to them of their certificates would certainly induce ſeveral of them to come home, who, when they found themſelves owned, and parentiſed by their country, would return to her, and many of them bring with them new arts and manufactures

from

from other ſtates, with the product of their labour, which had been loſt thus long to her. For,

Though I have mentioned a neceſſity for a new law, and to prevent Bankruptcies, yet no ſuch law, looking forward to futurity, can turn back to take them by the hand; and no amendment of their preſent ſtatutes can well avail them. Firſt, for the difficulty, as we have ſaid, in amending them; and, ſecondly, for the length of time that muſt be waſted in propping up the numberleſs improprieties and weakneſſes, which otherways would fall, like rubbiſh, and intercept every deſign of regularity and ſtrength.

Every moment to them prolongs a languiſhing ſtate of conſtrained or impoſed want; and as no people are more the immediate concern of the legiſlative pity, they ask this boon as the firſt relief againſt the ſeverity of the laws, they ever received from parliament. Having at all other times of its conferring ſuch mercies, (ſave in the lords acts, which now plead with them the reaſon and juſtice of their caſe,) been ſo entangled in equity, as conſtantly to be declared not free ſubjects of the law; whilſt, at the ſame time, they felt themſelves ſo fettered by the law, as not to be able to get clear to equity: but whatever may be the impoſed bar, placed againſt

againſt their approaching you with proper ſuit, they now cry out to you from the cruelty of their creditors, to whom they have given their all they had in the world; they cry out for life and liberty; words which, I dare ſay, will find their way to the ears and hearts of a Britiſh parliament. Now at a time, when public humanity reaches ſo far, as even to clothe our naked enemies, the priſoners of our mercy, ſhall not Engliſhmen, many once of large and extenſive fortunes, and conſequently the more unhappy in their adverſe ſtates, who now ſue you only to be reinſtated to the common rank of men, and be rendered uſeful to ſociety, ſhall not they, I ſay, find a way to pity and redreſs?

That I may be better underſtood, give me leave to repeat what I mean by the words, liberty and life; for the one may be a very dangerous gift without the other.

If the redreſs conferred reaches no farther than to liberty of their perſons, it will, I fear, be very ſhort of the good intended, reaching to thoſe only who are confined in priſons. The far greater part, who are equally dead in law, as being debarred all tranſactions with mankind, will not hereby receive the leaſt benefit; and, indeed, to thoſe who do, the difference of their con-

finement of ſtarving in a priſon, or ſtarving in a ſtreet, makes the one but little preferable to the other: ſo that the half-healing relief ſhews in this its own inconſiſtency and barrenneſs, as it muſt leave to them to compleat the intent of the charity, viz. of giving life as well as liberty, by a baniſhment of themſelves from their own country.

On the other hand, it would be taking up too much of your time to number the advantages which would accrue to our own ſtate, in the reſtoration of ſo many of its members to political life; whoſe former characters and knowledge in buſineſs might ſoon give them a credit, whereby they would re-eſtabliſh themſelves uſeful conſtituents of the ſtate: they ſpeak for themſelves. Many of whom, if hereafter bleſſed with affluence, may pay all they juſtly owe to their preſent creditors; of which he, who impolitically oppoſes their ever getting any property into their hands, debars himſelf even of a chance. Several have been the inſtances of the kind; and all honeſt men would certainly pay when in their power.

In ſhort, ſir, if malice, artifice, or reaſons unknown, raiſe enemies againſt their caſe to out-tongue every ſuit of theirs; though the alternative I am going to mention, may ap-

pear foreign to the compaſſion I have been ſolliciting; yet, what is to be done? its contraſt of policy muſt inhumanly adviſe, "that all Bankrupts whatſoever ſhould be ſhut up as dangerous to the ſtate," and then the parliament would oblige, perhaps, the worſe-hearted ſet of men in the kingdom.

I am, SIR,

Your moſt obedient

Humble Servant,

NOMIUS ANTINOMOS.